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No. 02-809

IN THE

Supreme Court of the United States

STATE OF MARYLAND,

Petitioner,

vs.

JOSEPH JERMAINE PRINGLE,

Respondent.

On Writ of Certiorari to the Court of Appeals of Maryland

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Does the Fourth Amendment probable cause standard allow an officer who knows that a crime has been committed by one of a small group of known suspects to arrest all of the suspects and continue investigating the crime?

2. Were the arrests in this case supported by probable cause?

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

This case addresses the standard for probable cause to arrest. The Maryland Court of Appeals' myopic standard asks the wrong questions and gives the wrong answers when addressing whether police can arrest multiple suspects for a

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1. This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   Both parties have given written consent to the filing of this brief.

single-suspect crime. Arrests are not the end of the investigation. Often an arrest can greatly aid the police in solving crimes with more than one suspect. Where there is more than one suspect for a crime, and further investigation is needed, then an officer should be allowed to arrest all of the suspects. The Maryland Court of Appeals' restrictive reading of the Fourth Amendment would prevent this. This needless hamstringing of police investigation is contrary to the interest of public safety, and therefore CJLF has an interest in this case.

SUMMARY OF FACTS AND CASE

On August 7, 1999, at about 3:16 a.m., Officer Jeffrey Snyder of the Baltimore County Police Department stopped a vehicle for speeding and because the driver was not wearing a seat belt. See *Pringle* v. *State*, 805 A. 2d 1016, 1019 (Md. 2002); J. A. 4-5. The driver and owner of the vehicle was Donte Carlos Partlow, Otis Calvin Smith was the back seat passenger, and the defendant, Joseph Jermaine Pringle, was the front seat passenger. See *Pringle*, *supra*, at 1019. When Partlow opened the glove compartment to get his registration, Officer Snyder noticed that it contained a large roll of cash. See *ibid.* He said nothing about this, but went back to his patrol car to check Partlow's license and registration for outstanding violations. Finding none, Officer Snyder returned, had Partlow exit the car, and issued a verbal warning. See *ibid.*

Another patrol car arrived at this time and Officer Snyder asked Partlow if he had any drugs or weapons in the car. See *ibid.* Partlow responded that he did not. Officer Snyder then obtained Partlow's permission to search the vehicle. See *ibid.* The three occupants were seated at the curb during the search. See *ibid.*

The search revealed $763.00 in the glove compartment and five baggies containing what appeared to be cocaine concealed

behind the armrest in the backseat. See *ibid.*[2] Officer Snyder then questioned the three about the money and drugs, telling them that he would arrest all three if none of them admitted to ownership. See *ibid.* When none of the three offered any information, they were all placed under arrest and taken to the police station. See *ibid.* Sometime between 4:00 and 5:00 a.m., Officer Snyder met with Pringle, and after obtaining a *Miranda* v. *Arizona*, 384 U. S. 436 (1966) waiver, Pringle confessed. See 805 A. 2d, at 1019-1020.

The trial court denied the defendant's suppression motion and a jury convicted him of possession with intent to distribute cocaine and possession of cocaine. See *id.*, at 1020. The Maryland Court of Special Appeals affirmed the conviction. See *ibid.* The Maryland Court of Appeals reversed the conviction. It held that Officer Snyder lacked probable cause to arrest the defendant because at the time of the arrest he had no evidence that the defendant exercised dominion or control over the cocaine, an element of the crime of cocaine possession. See *id.*, at 1027. This made the arrest illegal and invalidated the confession as fruit of the illegal arrest. See *id.*, at 1028. This Court granted certiorari on March 24, 2003.

SUMMARY OF ARGUMENT

The Maryland Court of Appeals incorrectly focused its probable cause analysis on the elements of the crime of drug possession. It is unnecessary to have proof of every element of a crime before making an arrest. For example, this Court does not require the officer to have a prima facie case before making an arrest. It has also upheld an arrest where evidence of one

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2. "At the time of the stop, the armrest was in the upright position and flat against the seat. When Officer Snyder pulled down the armrest he found the drugs, which had been placed between the armrest and the back seat of the car and, absent the pulling down of the armrest, were not visible." *Id.*, at 1019, n. 2.

element of the crime was missing. The real issue in this case is whether probable cause for arrest must focus on a single suspect. The correct answer is "no."

The relaxed standard of probable cause is inconsistent with requiring the arresting police to narrow their suspicion to a single suspect. The common law generally required some level of suspicion to justify a search or seizure. While it may seem low by modern standards, early probable cause was far from toothless. The hue and cry demonstrates that the common law permitted arresting multiple suspects for one crime. The Fourth Amendment was not a reaction to the level of suspicion required by the common law, but rather the suspicionless general warrant searches imposed against the colonies. The common law's definition of probable cause crossed the Atlantic, as shown by statutes from the First Congress and this Court's early probable cause decisions.

While probable cause has moved from its common law roots, it has been a short journey. Starting with *Brinegar* v. *United States*, this Court has enunciated a practical, flexible standard that accommodates the reasonable mistakes of police officers. While this standard cannot be defined precisely, it is possible to determine that probable cause requires less than a preponderance of the evidence. The combination of reasonable mistake and the less than a preponderance standard together strongly favor allowing multiple suspects to be arrested for a single-suspect crime.

This is consistent with the investigative function of arrests. An arrest is often the beginning of the investigation. A host of investigative techniques, such as custodial interrogation, identification by the victim, fingerprinting, and DNA testing, are much easier to employ after an arrest. The importance of continued investigation played an important role in the decision of many authors and noted scholars to reject a preponderance standard for probable cause. Where further investigation would be useful, logic argues strongly in favor of allowing the arrest of multiple suspects for a crime.

No decisions support a bright-line rule against multiple-suspect arrests. *Johnson* v. *United States* and *Wong Sun* v. *United States* both involved arrests with minimal suspicion and an unknown number of potential suspects, and are thus distinguished from the present case. *Mallory* v. *United States* is irrelevant because it did not address probable cause. Since probable cause is not susceptible to bright-line rules, none of these cases can support a categorical exemption against multiple-suspect arrests.

There was probable cause to arrest all three occupants of the car. While hypotheticals addressing multi-suspect arrests only discuss arresting two suspects, this number is too low. The fact that the police narrowed the universe of suspects to these three is itself a significant accomplishment that strongly supports probable cause.

The placement of the drugs behind the rear seat armrest and money in the car glove compartment, while strongly implicating at least one of the occupants, did not point to any one occupant. The location of the drugs and money also strongly suggests that more than one occupant knew about the drugs. Any claim that innocents were arrested along with the guilty must be read in this context. The Maryland Court of Appeals' claim that upholding the arrests in this case would sanction arrests involving vastly more suspects is spurious because this Court's decisions require each probable cause case to be decided on its own unique facts.

ARGUMENT

I. The Maryland Court of Appeals incorrectly focused its probable cause analysis on the elements of the crime of drug possession.

The arresting officer in this case was confronted with a mystery. Officer Snyder lawfully found over $700.00 in cash in the glove compartment and what was very likely to be

cocaine hidden between the backseat armrest and the backseat of the car. See *Pringle* v. *State*, 805 A. 2d 1016, 1019 (Md. 2002). The mystery was which or how many of the three occupants of the car was responsible for the drugs. He had three options: arrest all three and try to sort it out at the police station, unfairly arrest only some of them, or let them all go and allow the crime to go unsolved. His choice of the first option allowed him to solve the crime when the defendant confessed at the police station. See *id.*, at 1019-1020.

The Court of Appeals' analysis focused on the elements of the crime of drug possession. See *id.*, at 1021-1026. One element of the crime of drug possession is the exercise of " 'actual or constructive dominion or control,' " over the narcotics. See *id.*, at 1021. The Maryland high court concluded that because there was no evidence that the defendant exercised such control over the cocaine there was no probable cause to arrest him. See *id.*, at 1027.

This is the wrong approach to arrests involving multiple suspects. The notion that an officer must have evidence of every element of a crime before making an arrest is inconsistent with precedent. There are "established propositions that only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause." *Spinelli* v. *United States*, 393 U. S. 410, 419 (1969), overruled on other grounds in *Illinois* v. *Gates*, 462 U. S. 213, 238 (1983). Failure to prove a particular element at this embryonic stage of the criminal process should not necessarily be fatal to continued investigation through a search or seizure. In the context of the criminal trial, a prima facie case is where the prosecution presents enough evidence to overcome a motion to acquit. See *Martin* v. *Ohio*, 480 U. S. 228, 234 (1987). A prima facie case is less than proof beyond a reasonable doubt, as the defendant can still raise a reasonable doubt about any element of the offense. See *ibid.* While requiring less than proof beyond a reasonable doubt, a prima facie case still must have some proof of every element of the offense. The statements in *Spinelli* and *Gates* at

least contemplate that a lack of evidence of one element does not necessarily defeat probable cause to arrest.

Adams v. *Williams*, 407 U. S. 143 (1972) provides further demonstration. Police Sergeant Connally was patrolling a high-crime area in Bridgeport, Connecticut, one night. At 2:15 a.m. someone known to him "approached his cruiser and informed him that an individual seated in a nearby vehicle was carrying narcotics and had a gun at his waist." *Id.*, at 144-145. Sergeant Connally called for assistance and approached the vehicle. *Id.*, at 145. He tapped on the car window and asked the occupant, Williams, to open the door. *Ibid.* Williams instead rolled down the window and "the sergeant reached into the car and removed a fully loaded revolver from Williams' waistband." *Ibid.* It was precisely in the place indicated by the informant. Sergeant Connally then arrested Williams for unlawful possession of a firearm. *Ibid.* The search incident to the arrest uncovered substantial amounts of heroin on Williams and in the car. *Ibid.* While the Connecticut Supreme Court upheld the search, the Second Circuit Court of Appeals granted habeas relief in an en banc decision, holding that the evidence was obtained by an unlawful search. See *id.*, at 144.

This Court reversed. First, it found that Sergeant Connally's decision to investigate the tip and to take the gun from Williams were valid under *Terry* v. *Ohio*, 392 U. S. 1, 30 (1968). See 407 U. S., at 148. The subsequent search was also valid because it was incident to a lawful arrest.

> "In the present case the policeman found Williams in possession of a gun in precisely the place predicted by the informant. This tended to corroborate the reliability of the informant's further report of narcotics and, together with the surrounding circumstances, certainly suggested no lawful explanation for possession of the gun. Probable cause does not require the same type of *specific evidence of each element* of the offense as would be needed to support a conviction." *Id.*, at 148-149 (emphasis added).

As Justice Douglas' dissent noted, carrying a pistol is not a crime in Connecticut if the individual has a permit. See *id.*, at 149 (Douglas, J., dissenting). Sergeant Connally did not discern whether Williams had a permit when he made the arrest. The absence of a "lawful explanation" for the handgun was enough to provide the probable cause for the arrest. The fact that an element of the crime of illegal possession was missing from Sergeant Connally's calculus did not negate probable cause.

Even though the Maryland Court of Appeals did not address *Adams*, it is not necessary to determine the precise relationship between the elements of a crime and probable cause to arrest. In this case, there was evidence of all the elements of drug possession. The cocaine did not get into the car on its own. It was not hidden in a comparatively remote spot such as in the trunk, see *California* v. *Acevedo*, 500 U. S. 565, 567 (1991), or in an air vent under the dashboard. See *Michigan* v. *Thomas*, 458 U. S. 259, 260 (1982) (*per curiam*). The armrest in the middle of the rear seat was easily accessible to any of the occupants of the vehicle, making them by far the most likely suspects. The question in this case is not whether the crime of drug possession was committed by one of the occupants, but rather who among them committed it.

The Maryland Court of Appeals' focus on the elements of drug possession misses the key question in this case. What this case really revolves around is whether probable cause for arrest must focus on a single suspect. The correct answer is "no." Confused by its wayward analysis, the Maryland Court of Appeals came to the wrong conclusion. "In a specific case, we apply the elements of the alleged offense to the facts and circumstances of that case to determine whether the police officer had probable cause to make a warrantless arrest of a *particular* individual for that specific offense." *Pringle*, 805 A. 2d, at 1027 (emphasis added). In the right circumstances, the police can arrest multiple suspects and use other investiga-

tive techniques such as custodial interrogation in order to solve crimes. These circumstances are found in this case.

II. Probable cause's relaxed standard does not require police to narrow their suspicion to a single suspect before making an arrest.

A. The Relaxed Standard.

Analysis of multiple suspect arrests begins by examining the probable cause standard. Both history and modern practice show it to be relatively relaxed and flexible. This standard readily accommodates the effective policing found in this case.

1. Common law roots.

The common law typically required some level of suspicion to support an arrest or search. See Grano, Probable Cause and Common Sense: A Reply to the Critics of *Illinois* v. *Gates*, 17 U. Mich. J. L. Ref. 465, 479-480 (1984); 4 W. Blackstone, Commentaries 287-289 (1st ed. 1769). For a time in England, suspicionless general warrants were used primarily as a means to stifle the press. See 1 W. LaFave, Search and Seizure § 1.1(a), p. 3 (3d ed. 1996). While these were resisted in both Parliament and the courts, see *id.*, at 3-4, suspicionless searches were applied to the colonies in the form of the writ of assistance. See *id.*, at 4; Grano, *supra*, at 479. The Fourth Amendment grew out of dissatisfaction with these practices. See *Henry* v. *United States*, 361 U. S. 98, 100-101 (1959); Grano, *supra*, at 478-479.

The level of suspicion needed to justify a search or an arrest at the common law had several interchangeable names. See 2 M. Hale, The History of the Pleas of the Crown *79 (1736) ("suspicion"); *id.*, at *78 ("probably suspected"); *id.*, at *79 ("reasonableness of the suspicion"); *id.*, at *89 ("probable grounds"). Whatever term was used, the required level of suspicion for arrests or searches was quite low. One case

upheld a watchman's arrest at ten o'clock one night on a London street because the plaintiff failed to account for a bundle he carried. See *Lawrence* v. *Hedger*, 128 Eng. Rep. 6, 6 (C. P. 1810). In another, a constable arrested a man resting by a bridge with a saddle and bridle on his back. The man told the constable that he had just sold his horse at the market, but the constable believed that the man had or was about to steal a horse. This was enough justification for the arrest. See *Beckwith* v. *Philby*, 108 Eng. Rep. 585, 586 (K. B. 1827). Similar standards applied to searches. See Grano, 17 U. Mich. J. L. Ref., at 487-488. The common law did not require the constable to single out one individual from a group of suspects before making an arrest. See *id.*, at 480-481. A particularly vivid example of this is the hue and cry. Under this rule, once a felony was reported to the constable, he "had an obligation to raise a hue and cry so that a search for the offender could be conducted from town to town." *Id.*, at 482. Where the report did not specify the offender's identity, other types of suspicion could justify arrests.

> "[A]ll that can be done is for those that pursue the *hue* and *cry*, to take such persons as they have probable cause to suspect; as for instance, such persons as are vagrants, that cannot give an account where they live, whence they are, or such suspicious persons as come late into their inn or lodgings, and give no reasonable account where they had been, and the like." 2 Hale, *supra*, at *103 (emphasis in original).

Common law probable cause was not meaningless. According to Hale, a robbery complaint would not support a general warrant "to apprehend all persons suspected." See *id.*, at *112. When a constable secured a warrant, it was "the duty of the magistrate, and ought not to be left to the officer, to judge of the ground of suspicion." 4 Blackstone, at 288. While it may have been more lenient than modern standards, the common law did restrain the constable.

There is good evidence that the First Congress "shared the common law view that probable cause required only a focused suspicion." Grano, 17 U. Mich. J. L. Ref., at 488. For example, it passed a statute permitting officials "to enter [and search] any ship or vessel, in which they shall have reason to suspect any goods, wares, or merchandise subject to duty shall be concealed." Act of July 31, 1789, § 24, 1 Stat. 29, 43.[3] A search warrant was required for the entry and search of houses or other buildings and could only be obtained when they had "cause to suspect" that such goods were present. See *ibid.* Acts passed in 1790 and 1799 used identical language. See Act of March 2, 1799, § 68, 1 Stat. 627, 677-678; Act of August 4, 1790, § 48, 1 Stat. 145, 170. "Congress apparently saw no difference between the probable cause requirement in the fourth amendment and the 'reason to suspect' and 'cause to suspect' standards employed in these statutes." Grano, *supra*, at 489. "An Act 'passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, . . . is contemporaneous and weighty evidence of its true meaning.' " *Marsh* v. *Chambers*, 463 U. S. 783, 790 (1983) (quoting *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 297 (1988)) If this is true of the original Constitution, it is even more true of the Bill of Rights, which was drafted and prepared by the first Congress itself. See *Santa Fe Independent School Dist.* v. *Doe*, 530 U. S. 290, 318 (2000) (Rehnquist, J., dissenting).

This Court's earliest probable cause decisions took a similar approach. The first probable cause cases did not address searches or seizures. A 1799 forfeiture statute required the plaintiff claiming the seized goods to carry the burden of proof that they were wrongfully seized once the government proved "probable cause" for its action. See Act of March 2, 1799, § 71, 1 Stat. 627, 678. A plaintiff filing under this Act asserted that

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3. Congress submitted the Bill of Rights to the states less than two months later. See 1 Stat. 97 (1789).

the government had to make a prima facie case of forfeiture. This Court disagreed, as Chief Justice Marshall wrote:

> "It may be added, that the term 'probable cause,' according to its usual acceptation, means less than evidence which would justify condemnation; and in all cases of seizure, has a fixed and well-known meaning. It imports a seizure *made under circumstances which warrant suspicion.* In this, its legal sense, the court must understand the term to have been used by congress." *Locke* v. *United States*, 11 U. S. (7 Cranch) 339, 348 (1813) (emphasis added).

Wheeler v. *Nesbitt*, 65 U. S. (24 How.) 544 (1861) is another early case addressing probable cause. Here the defendants alleged that the plaintiff stole four horses and secured a warrant for his arrest. The plaintiff, who lawfully owned the horses, was acquitted of the charge and brought a malicious prosecution suit against the defendants. See *id.*, at 546-547. As part of his case, the plaintiff attempted to prove "that the prosecution was groundless, and without any reasonable or probable cause . . . ." *Id.*, at 548. The opinion held that probable cause existed if the defendants had "reasonable grounds for believing" that the plaintiff committed the crime. See *id.*, at 550. *Wheeler* upheld the trial courts' instruction that probable cause "was the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." *Id.*, at 551-552.

2. The modern standard.

Probable cause changed little as it entered the early twentieth century. *Carroll* v. *United States*, 267 U. S. 132 (1925), famous for the automobile exception to the warrant requirement, also contained extensive probable cause analysis. Prohibition agents set up a liquor buy with the two defendants which failed when the two did not show up. See *id.*, at 134-135. More than two months later, the agents saw the defendants driving in the same car they had when the buy had been set up. See *id.*, at 135. This, along with the fact that they were coming from Canada, a known source of contraband alcohol, provided probable cause for the stop and search. See *id.*, at 160. This is consistent with the limited, suspicion-based view of probable cause found in the common law and this Court's early decisions. See Grano, *supra*, 17 U. Mich. J. L. Ref., at 492.

The modern standard for probable cause was set in *Brinegar* v. *United States*, 338 U. S. 160 (1949), a case which closely followed *Carroll*. See *id.*, at 170. The decision is most notable for its often-quoted description of probable cause:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved." *Id.*, at 175; see also *Massachusetts* v. *Upton*, 466 U. S. 727, 732 (1984) (*per curiam*); *Illinois* v. *Gates*, 462 U. S. 213, 231 (1983).

This Court also indicated that the standard for probable cause was higher than it was originally. After quoting with approval from Chief Justice Marshall's opinion in *Locke*, the *Brinegar* Court stated that "[s]ince Marshall's time, at any rate, it has come to mean more than bare suspicion . . . ." 338 U. S., at 175 (footnote omitted).[4] While probable cause is more than unadorned suspicion, *Brinegar* does not exact a strict standard.

Most importantly for this case, the *Brinegar* Court notes that probable cause accommodates errors by the police. "Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room

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4. This passage discounts the passage in *Locke* stating that probable cause " 'imports a seizure made under circumstances which warrant suspicion.' " *Id.*, at 175, n. 14 (quoting *Locke*, 11 U. S., at 348).

must be allowed for some mistakes on their part." *Id.*, at 176. While the mistake must be that which a reasonable officer would make, see *ibid.*, *Brinegar* accepts that officers must be allowed to make mistakes if public safety is to be maintained by appropriately aggressive law enforcement.

Probable cause is a compromise between public safety and privacy. "These long-prevailing standards seek to safeguard citizens from rash and unreasonable interference with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection." *Ibid.* This reflects the reasonableness that is "[t]he touchstone of the Fourth Amendment," see *United States* v. *Knights*, 534 U. S. 112, 118 (2001), in which the interests of privacy and public needs are balanced. See *id.*, at 118-119; *Wyoming* v. *Houghton*, 526 U. S. 295, 300 (1999).

The inherent balancing of the probable cause determination helps to explain why there is no precise standard for measuring it. See *Ornelas* v. *United States*, 517 U. S. 690, 695 (1996). A hard and fast rule could not deal with the endless factual situations presented by searches and seizures or enforce the compromise between privacy and public needs. A result of the flexible, undefined nature of probable cause is that it can be difficult to apply. See *Anderson* v. *Creighton*, 483 U. S. 635, 644 (1987). While it is not possible to say what probable cause precisely is, it is possible to say what it is not.

Probable cause does not require a preponderance of the evidence. "Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the magistrate's decision" on the existence of probable cause. *Gates*, 462 U. S., at 235. The preponderance standard is inappropriate for probable cause not just because it is too precise, but also because it is too high. A standard this high would needlessly frustrate society's ability to investigate crime. See American Law Institute, Model Code of Pre-Arraignment Procedure, Commentary, 294-295 (Proposed

Draft 1975); 2 W. LaFave, Search and Seizure § 3.2(e), p. 65 (3d ed. 1996).

Gerstein v. *Pugh*, 420 U. S. 103 (1975) confronted whether a criminal defendant who has been arrested and held for trial is entitled to a judicial determination of probable cause for detention and whether that hearing must be adversarial. See *id.*, at 111. While the defendant was entitled to a hearing, see *id.*, at 119, it did not have to be adversarial. See *id.*, at 123. An important reason for this holding was the nature of probable cause.

> "The use of an informal procedure is justified not only by the lesser consequences of a probable cause determination but also by the nature of the determination itself. It does not require the fine resolution of conflicting evidence that a reasonable-doubt *or even a preponderance standard demands*, and credibility determinations are seldom crucial in deciding whether the evidence supports a reasonable belief in guilt." *Id.*, at 121 (emphasis added).

There are two possible explanations for this passage. The first is that the Court defined probable cause as less than a preponderance of evidence. The alternative is "that probable cause does not require 'the fine resolution of conflicting evidence,' because the hearing is generally held ex parte; thus there is no need for determinations regarding credibility." See Comment, Considering the Two-Tier Model of the Fourth Amendment, 31 Am. U. L. Rev. 85, 109 (1981). Since the reasoning behind the second interpretation is circular, see *ibid.*, the better argument is that this Court meant what it said in *Gerstein*. Probable cause, though incapable of precise definition, is less than a preponderance of evidence.

Recent decisions show that probable cause is still applied in a manner to accommodate legitimate police interests. While the factual nature of probable cause means that one probable cause finding is rarely a useful precedent for another, see *Ornelas*,

517 U. S., at 695, the cases reflect a general approach to probable cause that is relevant to the present case.

Brinegar's notion of reasonable mistake is relevant to modern probable cause analysis. In *Hill* v. *California*, 401 U. S. 797 (1971), officers had probable cause to arrest Hill and went to his apartment to make a warrantless arrest. *Id.*, at 799. The person who answered the door was not Hill, but matched Hill's physical description. See *ibid.* The man claimed that he was not Hill and produced identification indicating that he was named Miller, but the officers still arrested him. See *ibid.* The police were unimpressed and proceeded to search the apartment for " 'a couple of hours,' " and found evidence used to convict Hill. See *id.*, at 799-800. The fact that the officers were mistaken in the identity of the arrestee did not negate probable cause to arrest. See *id.*, at 802. The fact that the officers were "quite wrong," *id.*, at 804, did not render the arrest illegal, as "sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment . . . ." *Ibid.* An officer's judgment does not have to be correct, it must only be reasonable. See *Illinois* v. *Rodriguez*, 497 U. S. 177, 184 (1990).

Accommodation of reasonable mistake is key to a proper understanding of multiple-suspect arrests. The argument against such arrests is that they sweep too broadly, arresting the innocent along with the guilty. This is the essence of the objection to the arrest raised by the Maryland Court of Appeals. Because Officer Snyder had no evidence of Pringle exercising dominion and control over the drugs, the argument goes, see *Pringle* v. *State*, 805 A. 2d 1016, 1027 (Md. 2002), he arrested an "innocent" man. The reasonable mistake doctrine of *Brinegar* and subsequent decisions refutes this claim. While at some point the number of potentially innocent suspects will be too high for probable cause to sanction, that decision must be made on a case-by-case basis. The fact that an officer arrests both the innocent and guilty when arresting multiple suspects does not invalidate the arrest if the "mistakes" were reasonable.

Another example of probable cause's flexibility is *Sibron* v. *New York*, 392 U. S. 40 (1968), a companion case to *Terry* v. *Ohio*, 392 U. S. 1 (1968). Off-duty Officer Lasky heard a noise outside the door to his apartment. After taking a telephone call, he looked through the peephole and "saw 'two men tiptoeing out of the alcove toward the stairway.' " *Sibron*, *supra*, at 48. He called the police and put on civilian clothes and his service revolver. See *ibid.* He returned to the peephole and "saw 'a tall man tiptoeing away from the alcove and followed by this shorter man' . . . ." *Ibid.* Believing the two strangers to be burglars, Officer Lasky opened the door, entered the hallway, and loudly slammed the door. *Id.*, at 48-49. The two fled down the stairs and Lasky pursued, catching Peters, whom he patted down, finding burglary tools. See *id.*, at 49. Peters was convicted of possessing burglary tools. See *id.*, at 44.

This Court held that the tools were properly seized, finding that by the time Officer Lasky caught up with Peters, there was probable cause to arrest him. See *id.*, at 66. The strange noises, the fact that the two were strangers, the furtive tiptoeing, and the flight were deemed to be the strongest grounds for arrest "short of actual eyewitness observation of criminal activity." See *ibid.*

Although this conclusion is correct, it should be understood in the context of the innocent explanations for Peters' actions, and the incomplete information possessed by Officer Lasky. While flight from uniformed police is certainly suspicious, see *Illinois* v. *Wardlow*, 528 U. S. 119, 124 (2000), Officer Lasky was in civilian clothes and armed when Peters fled from him. "[F]light at the approach of a gun-carrying stranger . . . is hardly indicative of *mens rea*." *Sibron*, 392 U. S., at 75 (Harlan, J., dissenting). The majority's conclusion to the contrary, see *id.*, at 66, was correct because Officer Lasky only needed to satisfy the probable cause standard. Even though there was an innocent explanation for the suspect's flight, this did not prevent Officer Lasky from arresting Peters so that he might

prevent a crime from being committed and further investigate the activity.

Officer Lasky had less information at the time of arrest than would seem to satisfy the Maryland Court of Appeals. As the majority opinion implicitly notes, Officer Lasky did not see a crime being committed. See *ibid.* ("short of actual eyewitness observation of criminal activity"). The crime of possession of burglary tools could not be discovered before the arrest and frisk. Although he had an incomplete picture of what the two had done and were up to, this Court's definition of probable cause allowed Officer Lasky to make an arrest so that he could investigate further.

There are other examples of the flexibility and comparative lenience of probable cause when an officer is confronted with uncertain information. *Brinegar* is one example. The fact that one of the defendants had previously been arrested for transporting liquor, had a reputation for transporting it, and was in an automobile about to enter a dry state, see 338 U. S., at 166, provided probable cause to arrest for illegally transporting liquor into a state. See *id.*, at 171. The Court found this case to be indistinguishable from *Carroll*, see *id.*, at 165, a case involving similarly thin evidence. See *supra*, at 12. While *Brinegar* professed to move beyond the common law conception of probable cause, the result in that case shows that this move was a very short journey. See Grano, 17 U. Mich. J. L. Ref., at 492-493.

The history and more recent treatment of probable cause open the door for multiple suspect arrests. The common law hue and cry demonstrates that even more aggressive practices were accepted. The definitions of probable cause promulgated by the first Congress and Chief Justice Marshall did not vary from the common law. Modern probable cause may be stricter, but not by much. The fact that this flexible standard is less than a preponderance of the evidence clears the way for multiple suspect arrests. If it had to be more probable than not that suspects were guilty, then police could never arrest more than

one suspect at a time for a one-perpetrator crime. Probable cause's accommodation of reasonable mistake is also consistent with multiple suspect arrests. As the next section demonstrates, the constitutionality of such arrests is reinforced by the importance of the arrest to investigating crime.

B. Arrests and Investigation.

Although good investigations lead to arrests, an arrest is not the end of a criminal investigation. The arrest is often the beginning of the most serious phase of an investigation. One of the most important investigative techniques, custodial interrogation, is difficult to accomplish without probable cause to arrest. Police cannot pick up a suspect for questioning unless there is probable cause to arrest. See *Dunaway* v. *New York*, 442 U. S. 200, 216 (1979). While officers do ask suspects to come to the station voluntarily, see F. Inbau, J. Reid, & J. Buckley, Criminal Interrogations and Confessions 211-212 (3d ed. 1986), some will not go without compulsion. See *id.*, at 212. In those cases, interrogation can only be secured through an arrest. See *ibid.* Given the importance of interrogations and confessions to solving crimes, see *id.*, at xiv; *Culombe* v. *Connecticut*, 367 U. S. 568, 571 (1961), the ability to arrest suspects is essential to the continuing investigation of a crime.

> "In each case police were confronted with one or more brutal murders which the authorities were under the highest duty to solve. Each of these murders was unwitnsessed, and the only positive knowledge on which a solution could be based was possessed by the killer. In each there was reasonable ground to *suspect* an individual but not enough legal evidence to *charge* him with guilt. In each the police attempted to meet the situation by taking the suspect into custody and interrogating him. * * * [N]o one suggests that any course held promise of solution of these murders other than to take the suspect into custody for questioning. The alternative was to close the books on the crime and forget it, with the suspect at large. This is a grave choice for a

society in which two-thirds of the murders already are closed out as insoluble." *Watts* v. *Indiana*, 338 U. S. 49, 58 (1949) (Jackson, J., concurring and dissenting) (emphasis in original).

An arrest opens the door for other investigative techniques. A suspect will be fingerprinted after an arrest, but it is unclear whether something short of probable cause will support a detention for the purpose of fingerprinting. See *Davis* v. *Mississippi*, 394 U. S. 721, 728 (1969). Many other physical tests of the suspect can be conducted after an arrest, such as placing the arrestee's hands under an ultraviolet lamp, taking fingernail scrapings, hair samples, urine samples, or a Breathalyzer test. See 3 W. LaFave, Search and Seizure § 5.3(c), pp. 132-133 (3d ed. 1966). Arrest also allows police to identify the suspect as the perpetrator through a lineup or other means. See American Law Institute, Model Code of Pre-Arraignment Procedure, Commentary, 294-295 (Proposed Draft 1975) (Model Code). The importance of DNA testing in criminal investigations, see Cronan, The Next Frontier for Law Enforcement: A Proposal for Complete DNA Databanks, 28 Am. J. Crim. L. 119, 127 (2000), insures that post-arrest investigation will be even more important in the future.

The importance of continuing the investigation after the arrest significantly influences the approach taken to the law of arrests. The Model Code rejected a preponderance of the evidence standard for arrests because it is

> "the purpose of this decision [to arrest] is to take a person into custody so that the determination can be made whether or not to charge the arrested person with crime. To require that guilt be more probable than not at the time of the arrest is to require at the beginning of the process the degree of certainty which is appropriate to its conclusion." Model Code, *supra*, at 294.

The higher standard would frustrate investigation efforts, forcing society to pay an excessively high price in unsolved

crime. See *id.*, at 294-295. One noteworthy concern to the commentators was the case of a crime with more than one suspect. A preponderance standard would frustrate the ability of officers to use the arrest and subsequent investigation to solve the crime, an unacceptable proposition. See *id.*, at 295-296.

This echoed the position adopted by the Second Restatement of Torts.

> "A sees B and C bending over a dead man, D. B and C each accuse the other of murdering D. A is not sure that either B or C did the killing, but he has a reasonable suspicion that either B or C killed D. A is privileged to arrest either or both." Restatement (Second) of Torts § 119, Illustration 2, p. 198 (1964); accord Model Code, *supra*, at 295.

Professor LaFave concurs with the Model Code's position.

> "There is much to be said for the Model Code position. If the function of arrest were merely to produce persons in court for purposes of their prosecution, then a more-probable-than-not test would have considerable appeal. But there is also an investigative function which is served by the making of arrests." See 2 LaFave, § 3.2(e), at 65.

Since the purpose of the arrest, however, "is to initiate a short-term process of sorting out, usually on the scene, to determine which person should be charged with crime, *i.e.*, arrested in the full sense of the word," it can be appropriate to arrest more than one suspect for a crime. *State* v. *Jordan*, 583 P. 2d 1161, 1163 (Or. App. 1978). Where further investigation is called for, officers should be allowed to arrest multiple suspects. As the next section demonstrates, this reasonable approach is not defeated by any of this Court's precedents.

C. Conflict.

Three decisions from this Court, *Wong Sun* v. *United States*, 371 U. S. 471 (1963), *Mallory* v. *United States*, 354 U. S. 449 (1957), and *Johnson* v. *United States*, 333 U. S. 10 (1948), could create a conflict over probable cause in multiple suspect situations to create a bright-line rule against multiple suspect arrests if improperly read. Bright lines are particularly inappropriate to probable cause decisions, *Ornelas* v. *United States*, 517 U. S. 690, 699 (1996), and none of these cases can support a bright-line rule favoring the defendant.

In *Johnson*, federal agents received information from the Seattle police that unknown individuals were smoking opium in the Europe Hotel. See 333 U. S., at 12. Three federal agents and a Seattle police detective went to the hotel, where they detected a strong scent of burning opium coming from Room 1. See *ibid.* The Seattle officer knocked on the door and identified himself to the defendant, who opened the door and let the officers in. See *ibid.* After seeing that she was alone in the room, the officers arrested the defendant and searched the room. The search uncovered "opium and smoking apparatus." *Ibid.*

This Court held the search was the product of an illegal arrest. The odor of burning opium was not enough to justify a warrantless search, see *id.*, at 13, so the search stood or fell on the legality of the arrest. While the United States attempted to justify the search as incident to a valid arrest, it "in effect, concedes that the arresting officer did not have probable cause to arrest petitioner until he had entered her room and found her to be the sole occupant." *Id.*, at 16. The Court agreed with the concession. "Thus the Government quite properly stakes the right to arrest, not on the informer's tip and the smell the officers recognized before entry, but on the knowledge that she was alone in the room, gained only after, and wholly by reason of, their entry of her home." *Ibid.* Since this initial entry was unlawful, the arrest and search were also invalid. See *id.*, at 17.

Mallory is another case susceptible to misreading. The victim was alone in the basement of her apartment when she was raped by "a masked man, whose general features were identified to resemble those of petitioner and his two grown nephews . . . ." 354 U. S., at 450. The petitioner, Mallory, and his nephews lived in the same building as the victim. *Ibid.* Mallory and one of the nephews disappeared from the apartment house soon after the crime. The petitioner was apprehended the next day and taken to police headquarters along with his nephews. See *ibid.* The suspects were then interrogated over the next ten hours until confessions were obtained. See *id.*, at 450-451.

Mallory is most noted for the holding that the Federal Rules of Criminal Procedure required suppressing a confession due to an excessive delay between the arrest and the arraignment. See *id.*, at 455-456. A statement at the end of the opinion addresses the nature of probable cause. In finding that the fact that there were multiple suspects did not excuse the delay, the Court stated that

> "[n]or is there an escape from the constraint laid upon the police by [FRCP, rule 5(a)] in that two other suspects were involved for the same crime. Presumably whomever the police arrest, they must arrest on 'probable cause.' It is not the function of the police to arrest, as it were, at large and to use an interrogating process at police headquarters in order to determine whom they should charge before a committing magistrate on 'probable cause.' " *Id.*, at 456.

Wong Sun is the most recent case to suggest that probable cause must focus on one suspect. In addition to establishing the fruit of the poisonous tree doctrine for Fourth Amendment cases, the *Wong Sun* Court also ruled on probable cause to arrest. Federal agents were told by an arrestee that he had purchased heroin from a person known to him as " 'Blackie Toy' " who operated a laundry on Leavenworth Street in San Francisco. See 371 U. S., at 473. Federal agents went to a laundry on Leavenworth Street operated by James Wah Toy.

Upon learning that he was confronted by federal narcotics agents, Toy slammed the door to the laundry and ran through a hallway to his living quarters in the back. The agents pursued, arresting him as he reached into a nightstand drawer in his bedroom. See *id.*, at 474. There was no other information linking Toy or his laundry to "Blackie Toy" described by the informant. See *ibid.* This Court held that Toy's arrest was illegal because the agents lacked sufficiently precise information. The arrest was unlawful because there was no "information of some kind which had narrowed the scope of their search to this particular Toy." *Id.*, at 481.

These cases do not establish a *per se* rule requiring police to narrow their investigation to one suspect before making an arrest. *Johnson* and *Wong Sun* involved very low levels of suspicion. In *Johnson*, the officers did not know who or how many people were in the hotel room. Except for the smell of burning opium, the agents had no idea what was being done or who was doing it. This is very different from the present case in which the officer knew someone possessed the cocaine and could narrow his suspicion to the three occupants. This focus was also lacking in *Wong Sun*. The federal agents had scant information that pointed to a potentially large universe of suspects. The street named by the informant was 30 blocks long, and the laundry's name did not bear the name Toy. See *id.*, at 480-481. This Court's emphasis on the agent's failure to narrow the focus down to James Toy indicates that there were unknown other people named Toy that could have been subject to this information. Since the officers had no reason to believe that James Wah Toy went by the nickname "Blackie," the individual mentioned by the informant could have been one of many people with the last name "Toy" on a very large street in a city with a large Chinese population. As in *Johnson*, the number of potential suspects was unknown, distinguishing *Wong Sun* from this case.

The statements in *Mallory* must be read in the context of that decision. *Mallory* did not turn on the legality of the arrests,

but rather the length of time between the arrest and the arraignment. See 354 U. S., at 455. Also, the opinion asserts that there was ample evidence of probable cause to arrest the petitioner. See *ibid.* Therefore, there was no need to interrogate the defendant extensively before arraigning him. See *ibid.* The statement regarding multiple suspects, see *ibid.*, is made in the same context. Because other suspects were also arrested, the police must also have had probable cause to arrest them, making delay for the purpose of interrogation unnecessary and illegal. See *ibid.* Quite simply, "[t]he Supreme Court did not, however, suggest that the arrest of Mallory was illegal." Model Code, *supra*, at 295, n. 14.

The relatively low standard of probable cause and the importance of further investigation after arrest strongly favor allowing police to arrest multiple suspects of one crime where further investigation is called for. A careful examination of the facts in this case demonstrates that there was probable cause to arrest all three suspects.

III. There was probable cause to arrest all three occupants of the car.

The fact that police can arrest more than one suspect for a crime, see Part II, *supra*, does not end the inquiry. Not every case will have facts which support arresting more than one person. There is also an upper limit on the number of people that can be arrested for an offense. The probable cause requirement is not so flexible as to sanction dragnets, like the mass arrest of African-American youths struck down in *Davis* v. *Mississippi*, 394 U. S. 721, 722, 728 (1969). When the victim's only description of her assailant is that he was a "Negro youth," *id.*, at 722, the police must do further investigation to narrow the set of suspects before making arrests. Similarly, the fact that all of the occupants of a vehicle may be arrested when an officer discovers a crime there does not allow the police to arrest everyone in an enclosed structure after the commission of

a crime. For example, the police cannot arrest everyone in the crowded theater to determine who shouted "fire." Cf. *Schenck* v. *United States*, 249 U. S. 47, 52 (1919).

Probable cause requires a narrowing of the universe of suspects to some manageable number before making an arrest. The hypotheticals in the Model Code of Pre-Arraignment Procedure and the Second Restatement of Torts sanction arrests of two suspects for a crime. See *supra*, at 20-21. This is a floor, not a ceiling for the number of suspects who can be arrested in the appropriate multiple-suspect situation. In the right circumstances, it may be appropriate to arrest ten suspects. See Grano, Probable Cause and Common Sense: A Reply to the Critics of *Illinois* v. *Gates*, 17 U. Mich. J. L. Ref. 465, 496 (1984). "It causes us to overlook the success of the police in narrowing their investigation from the universe of all possible suspects, which may include much of the population, to ten individuals. In a modern, mobile society, this should be seen as a rather significant accomplishment." *Ibid.* The fact that three suspects were arrested is not a barrier to finding probable cause.

Officer Snyder's decision to arrest the three occupants of the vehicle was a reasonable choice that is consistent with the probable cause standard. He had much more than suspicion that one of the three had placed drugs in the car. The five plastic baggies containing what appeared to be (and was) cocaine was placed in the car by someone. Their placement between the rear seat and armrest strongly suggests that one of the current occupants placed the drugs there. See *supra*, at 8. The $763.00 in the glove compartment reinforces the notion that someone in the car is selling drugs. Officer Snyder had more than enough information to conclude that someone in that car hid the drugs.

What he did not know was who or how many of them committed the crime. While the owner of the car denied having drugs and consented to the search, the reports are filled with the cases of consensual searches incriminating the consenting party. See, *e.g.*, *United States* v. *Drayton*, 536 U. S. 194, 198-199

(2002); *Ohio* v. *Robinette*, 519 U. S. 33, 36 (1996). The placement of the drugs in the backseat and the money in the glove compartment spread the suspicion, since no passenger was closest to both. With suspicion equally diffused among the three occupants, arresting all of them was the fairest and most effective option.

United States v. *Di Re*, 332 U. S. 581 (1948) does not change the analysis. An informant told officials that he was to buy counterfeit gas ration coupons from Buttitta. See *id.*, at 583. When officials made the raid, the informant was in the rear seat holding coupons he said he obtained from Buttitta, who was in the driver's seat. See *ibid.* Di Re was in the passenger seat. All three were taken to the police station and searched, which uncovered more illegal coupons on Di Re. See *ibid.* The search of Di Re was held illegal because there was no probable cause to arrest him. *Id.*, at 595. Unlike the present case, there was evidence that the two other occupants of the car were involved in the crime, while the agents had no information pointing to Di Re. See *id.*, at 593. Where officers have information that points to some, but not all members of a vehicle, they can only arrest those at whom the information points. Where the suspicion is equally shared, then every suspect should be arrested.

The separation of the drugs and money also diminishes the innocence of all three occupants. Placing the drugs and money in these separate areas would be difficult for one occupant to do without the knowledge or cooperation of at least one other passenger. Officer Snyder's threat to arrest all three if someone did not own up to the drugs, see *Pringle* v. *State*, 805 A. 2d 1016, 1019 (Md. 2002), must be understood in this context. The admonition was not just an inducement to confess, but also an effort to get any innocent passengers who had knowledge of the crime to incriminate the guilty. The Maryland Court of Appeals' characterization of this good police work as exploitation, see *id.*, at 1031, is both inaccurate and unfair.

Once his questioning failed to discover the culprit, Officer Snyder's options were limited. A *Terry* v. *Ohio*, 392 U. S. 1 (1968) frisk had little prospect of discovering any further information since the perpetrator already kept the drugs and money away from his person. If he let the suspects go, then there was little chance of solving the crime. The only alternative would be to check the baggies of cocaine for fingerprints in the hope that the perpetrator's fingerprints were already in a fingerprint database. Obtaining fresh fingerprints from the suspects would be very difficult, since it is unlikely that Officer Snyder carried a fingerprinting kit with him. Since taking them to the stationhouse for fingerprinting without probable cause raises serious Fourth Amendment issues, see *Davis*, 394 U. S., at 728, arrest is the most reasonable means to solve the crime.

Not every crime can be solved, but a crime in which suspicion has been narrowed so closely should be solved. The equally shared suspicion between the three, the failure of any members of the trio to give more information, and the inability to solve the crime without an arrest and more investigation all underscore the reasonableness of the arrest. This reasonableness supports the conclusion that the arrests were based upon probable cause.

Amicus does not advocate a separate reasonableness test for probable cause. Probable cause is the Fourth Amendment's reasonableness standard, and any additional balancing test is an unnecessary complication. See *Dunaway* v. *New York*, 442 U. S. 200, 213 (1979). But the reasonableness of Officer Snyder's actions is still relevant to the constitutionality of the arrests.

The imprecise probable cause standard, see *Ornelas* v. *United States*, 517 U. S. 690, 695 (1996), "is a fluid concept-turning on the assessment of probabilities in particular factual contexts . . . ." *Illinois* v. *Gates*, 462 U. S. 213, 232 (1983). It is applied in a nontechnical manner under "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar* v.

United States, 338 U. S. 160, 175 (1949). The evidence is examined " 'not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.' " *Gates*, *supra*, at 232 (quoting *United States* v. *Cortez*, 449 U. S. 411, 418 (1981)). Probable cause allows officers to make reasonable mistakes without violating the Fourth Amendment. *Hill* v. *California*, 401 U. S. 797, 804 (1970). Since whatever error Officer Snyder may have made for arresting the three for the crime was reasonable, there was probable cause. The objective "reasonable officer" standard is relevant to this inquiry.

Probable cause protects several constitutional interests. It protects liberty since suspicionless searches and arrests are inconsistent with this value. See *Henry* v. *United States*, 361 U. S. 98, 102 (1959). Privacy is similarly protected. See *ibid.* Probable cause also limits police discretion. "To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." *Brinegar*, 338 U. S., at 176. The arrests in this case are consistent with these values.

As discussed above, the arrests were far from suspicionless. There was ample reason to believe that one or more of the three was involved in drug dealing. This type of suspicion also limits an officer's discretion. There was no dragnet like the one condemned in *Davis*. The Maryland Court of Appeals' contention that upholding this arrest could lead to mass arrests such as all the occupants of a movie theater, see *Pringle*, 805 A. 2d, at 1027, n. 12, is specious. If there is one certainty about the probable cause standard, it is that every case must be examined upon its own facts. See, *e.g.*, *Ornelas*, 517 U. S., at 696; *Gates*, 462 U. S., at 232; *Sibron* v. *New York*, 392 U. S. 40, 59 (1968). Under probable cause "[o]ne simple rule will not cover every situation." *Adams* v. *Williams*, 407 U. S. 143, 147 (1972). Therefore, "because the mosaic which is analyzed for a reasonable-suspicion or probable-cause inquiry is multi-faceted, 'one determination will seldom be a useful precedent for another.' " *Ornelas*, *supra*, at 698 (quoting *Gates*, *supra*, at

238, n. 11). While there are exceptions to this rule, see *ibid.*, arresting three suspects will not dictate upholding the arrest of a much larger number of individuals. See *Ornelas*, *supra*, at 698. Probable cause is thus particularly ill-suited to the Maryland court's slippery slope argument. While the number of potential arrestees may at some point attenuate the suspicion sufficiently to defeat probable cause, that determination must be made on a case-by-case basis.

Officer Snyder's good police work should not be punished through the exclusion of Pringle's confession.[5] Upholding the search will not grant police license to make mass arrests. Instead, it recognizes the importance of the arrest to investigation and the flexibility of the probable cause standard when confronted with multiple suspects. Upholding the arrests allows probable cause to continue to maintain the balance between individual rights and public safety.

CONCLUSION

The decision of the Maryland Court of Appeals should be reversed.

May, 2003

Respectfully submitted,

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5. Because Pringle's arrest was supported by probable cause, *amicus* does address the issue of whether his confession was the product of an illegal arrest under *Brown* v. *Illinois*, 422 U. S. 590 (1975).